

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 11-O-19171-DFM
)	(11-O-19356; 12-O-10406;
SAMANTHA COURTNEY HARRIS,)	12-O-11345; 12-O-11775;
)	12-O-12224; 12-O-12561)
Member No. 170337,)	
)	DECISION AND ORDER OF
A Member of the State Bar.)	INVOLUNTARY INACTIVE
_____)	ENROLLMENT

In this matter, respondent Samantha Courtney Harris (Respondent) was charged with 42 counts of misconduct stemming from seven client matters. Respondent failed to participate either in person or through counsel, and her default was entered. The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC), and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

¹ Unless otherwise indicated, all references to rules are to this source.

² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that Respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on June 6, 1994, and has been a member since then.

Procedural Requirements Have Been Satisfied

On December 4, 2012, the State Bar properly filed and served an NDC on Respondent by certified mail, return receipt requested, at her membership records address. The NDC notified Respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

In addition, the State Bar took many additional steps to provide Respondent with actual notice of this proceeding. In early January 2013, the State Bar made numerous attempts to contact Respondent. These attempts included conducting various searches using the Lexis/Nexis public records databases. Through these searches, the State Bar identified Respondent's current address, several potential telephone numbers, and a potential email address. The State Bar tried to reach Respondent through the potential telephone numbers and email address. The State Bar also called Respondent's landlord and confirmed Respondent's address. Respondent's landlord declined to provide the State Bar with Respondent's telephone number without first receiving Respondent's authorization.

Respondent failed to file a response to the NDC. On January 10, 2013, the State Bar filed and properly served a motion for entry of Respondent's default. The motion complied with all the requirements for a default, including supporting declarations of reasonable diligence by the trial counsel and State Bar investigator declaring the additional steps taken to provide notice to

Respondent. (Rule 5.80.) The motion also notified Respondent that if she did not timely move to set aside her default, the court would recommend her disbarment.

On January 10, 2013, Respondent called the State Bar and inquired why a State Bar investigator had called her landlord. The State Bar investigator advised Respondent that the State Bar was obliged to make their best efforts to ensure Respondent received notice of the present discipline proceeding. Respondent then terminated the telephone call. Twenty minutes later Respondent again called the State Bar investigator. The investigator told Respondent that she was facing default in the present discipline proceeding. Respondent again terminated the telephone call.

On January 14, 2013, State Bar senior trial counsel Kimberly Anderson telephoned Respondent. Respondent answered the telephone and was advised that there was a telephonic status conference in the present discipline proceeding at 9:30 a.m. Shortly thereafter, Respondent participated in the 9:30 a.m. status conference.

Respondent did not file a response to the default motion, and her default was entered on January 29, 2013. The order entering the default was served on Respondent at her membership records address by certified mail, return receipt requested.³ The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and she has remained inactively enrolled since that time.

Respondent also did not seek to have her default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On August 2, 2013, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with Respondent since the default was entered;

³ A courtesy copy was also sent by certified mail to the address identified by the State Bar as Respondent's present address.

(2) Respondent had no other filed disciplinary matters pending, but did have pending investigations; (3) Respondent has no prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from Respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on October 11, 2013.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of Respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that Respondent is culpable as charged and, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

Case Number 11-O-19171 (Torres Matter)

Count One – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to competently perform legal services) by failing to supervise non-attorney employees and failing to perform any legal services of value for her client.

Count Two – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude–misrepresentation) by intentionally sending her client a false billing statement.

Count Three – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to refund unearned fees) by failing to refund unearned fees to her client upon termination of employment.

Count Four – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate in a State Bar investigation), by failing to respond to the State Bar investigator's letter.

Count Five – Respondent willfully violated Business and Professions Code section 6068, subdivision (j) (failing to update membership records address), by failing to notify the State Bar of her change of State Bar membership records address for more than 30 days after changing her address.

Case Number 11-O-19356 (Correa Matter)

Count Six – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to competently perform legal services) by failing to supervise non-attorney employees and failing to perform any legal services of value for her client.

Count Seven – Respondent willfully violated rule 2-300(B) of the Rules of Professional Conduct (failure to properly notify client of sale of law practice) by failing to properly advise her client regarding the sale of her law practice.

Count Eight – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failing to communicate), by failing to respond to multiple telephone messages she received from her client and failing to inform her client that Respondent sold her law practice.

Count Nine – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment) by failing to give her client due notice that she would no longer be working on the client's legal matter.

Count Ten – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to refund unearned fees) by failing to refund unearned fees to her client upon termination of employment.

Count Eleven – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate in a State Bar investigation), by failing to respond to the State Bar investigator's letter.

Case Number 12-O-11345 (Gonzalez Matter)

Count Twelve – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to competently perform legal services) by failing to supervise non-attorney employees and failing to perform any legal services of value for her client.

Count Thirteen – Respondent willfully violated Business and Professions Code section 6106.3 (failure to comply with Civil Code section 2944.6) by failing to provide a loan modification client with a separate statement containing the warning language required by Civil Code section 2944.6.

Count Fourteen – Respondent willfully violated Business and Professions Code section 6106.3 (failure to comply with Civil Code section 2944.7) by charging and receiving advanced fees after October 11, 2009, in exchange for agreeing to perform loan modification services in violation of Civil Code section 2944.7.

Count Fifteen – Respondent willfully violated rule 2-300(B) of the Rules of Professional Conduct (failure to properly notify client of sale of law practice) by failing to properly advise her client regarding the sale of her law practice.

Count Sixteen – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failing to communicate), by failing to inform her client that Respondent sold her law practice and would no longer represent the client's interests.

Count Seventeen – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment) by failing to give her client due notice that she would no longer be working on the client's legal matter.

Count Eighteen – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to refund unearned fees) by failing to refund unearned fees to her client, upon termination of employment.

Case Number 12-O-10406 (Camacho Matter)

Count Nineteen – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to competently perform legal services) by failing to supervise non-attorney employees and failing to perform any legal services of value for her client.

Count Twenty – Respondent willfully violated Business and Professions Code section 6106.3 (failure to provide statement to borrower in compliance with Civil Code section 2944.6) by failing to provide a loan modification client with a separate statement containing the warning language required by Civil Code section 2944.6.

Count Twenty-One – Respondent willfully violated Business and Professions Code section 6106.3 (failure to comply with Civil Code section 2944.7) by charging and receiving advanced fees after October 11, 2009, in exchange for agreeing to perform loan modification services in violation of Civil Code section 2944.7.

Count Twenty-Two – Respondent willfully violated rule 2-300(B) of the Rules of Professional Conduct (failure to properly notify client of sale of law practice) by failing to properly advise her client regarding the sale of her law practice.

Count Twenty-Three – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failing to communicate), by failing to inform her client that Respondent sold her law practice and would no longer represent the client's interests.

Count Twenty-Four – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment) by failing to give her client due notice that she would no longer be working on the client's legal matter.

Count Twenty-Five – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to refund unearned fees) by failing to refund unearned fees to her client upon termination of employment.

Case Number 12-O-11775 (Reyes Matter)

Count Twenty-Six – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to competently perform legal services) by failing to supervise non-attorney employees and failing to perform any legal services of value for her client.

Count Twenty-Seven – Respondent willfully violated Business and Professions Code section 6106.3 (failure to provide statement to borrower in compliance with Civil Code section 2944.6) by failing to provide a loan modification client with a separate statement containing the warning language required by Civil Code section 2944.6.

Count Twenty-Eight – Respondent willfully violated Business and Professions Code section 6106.3 (failure to comply with Civil Code section 2944.7) by charging and receiving advanced fees after October 11, 2009, in exchange for agreeing to perform loan modification services in violation of Civil Code section 2944.7.

Count Twenty-Nine – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate in a State Bar investigation), by failing to respond to the State Bar investigator's letter.

Case Number 12-O-12224 (Sanchez Matter)

Count Thirty – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to competently perform legal services) by failing to supervise non-attorney employees and failing to perform any legal services of value for her client.

Count Thirty-One – Respondent willfully violated rule 2-300(B) of the Rules of Professional Conduct (failure to properly notify client of sale of law practice) by failing to properly advise her client regarding the sale of her law practice.

Count Thirty-Two – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failing to communicate), by failing to inform her client that Respondent sold her law practice and would no longer represent the client’s interests.

Count Thirty-Three – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment) by failing to give her client due notice that she would no longer be working on the client’s legal matter.

Count Thirty-Four – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to refund unearned fees) by failing to refund unearned fees to her client upon termination of employment.

Case Number 12-O-12561 (Martinez Matter)

Count Thirty-Five – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to competently perform legal services) by failing to supervise non-attorney employees.

Count Thirty-Six – Respondent willfully violated Business and Professions Code section 6106.3 (failure to provide statement to borrower in compliance with Civil Code section 2944.6) by failing to provide a loan modification client with a separate statement containing the warning language required by Civil Code section 2944.6.

Count Thirty-Seven – Respondent willfully violated Business and Professions Code section 6106.3 (failure to comply with Civil Code section 2944.7) by charging and receiving advanced fees after October 11, 2009, in exchange for agreeing to perform loan modification services in violation of Civil Code section 2944.7.

Count Thirty-Eight – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate in a State Bar investigation), by failing to respond to the State Bar investigator’s letter.

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12-O-12224; and 12-O-12561**

Count Thirty-Nine – Respondent willfully violated rule 1-300(A) of the Rules of Professional Conduct (aiding the unauthorized practice of law) by allowing non-attorneys to give legal advice to clients.

Count Forty – Respondent willfully violated Business and Professions Code section 6105 (permitting misuse of name) by permitting non-attorneys to run a law office using her name and law license.

Count Forty-One – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude–misrepresentation) by misleading the public and her clients into believing Respondent was running the law office when in fact she was an attorney overseeing the law office in name only.

Count Forty-Two – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude–habitual disregard of client matters) by habitually disregarding the interests of her clients, including repeatedly failing to perform any competent legal services.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and Respondent’s disbarment is recommended. In particular:

- (1) the NDC was properly served on Respondent under rule 5.25;
- (2) Respondent had actual notice of the proceedings prior to the entry of her default, as she participated in a status conference before this court; was properly served with a copy of the NDC; and was warned by the State Bar that this matter was slated to proceed by default;
- (3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the NDC, deemed admitted by the entry of the default, support a finding that Respondent violated a statute, rule, or court order that would warrant the imposition of discipline.

Despite actual notice and opportunity, Respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATIONS

Disbarment

The court recommends that respondent **Samantha Courtney Harris**, State Bar Number 170337, be disbarred from the practice of law in the State of California and that her name be stricken from the roll of attorneys.

Restitution

The court also recommends that Respondent be ordered to make restitution to the following payees:

- (1) Jose and Maria Torres in the amount of \$5,343 plus 10 percent interest per year from May 19, 2011;
- (2) Sarah Correa in the amount of \$6,820 plus 10 percent interest per year from October 25, 2011;
- (3) Alma Gonzalez in the amount of \$6,215 plus 10 percent interest per year from June 15, 2011;
- (4) Marcos Camacho in the amount of \$3,800 plus 10 percent interest per year from September 24, 2011; and
- (5) Ruth Sanchez in the amount of \$8,800 plus 10 percent interest per year from October 11, 2011.

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

California Rules of Court, Rule 9.20

The court also recommends that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that **Samantha Courtney Harris**, State Bar Number 170337, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: December ____, 2013

DONALD F. MILES
Judge of the State Bar Court